

REMARKS

We note with appreciation that all pending claims, *i.e.*, Claims 18-25, are allowed. The undersigned attorney also wishes to thank Examiner Dinh for his helpful comments during a telephone interview on March 13, 2003, with respect to the Examiner's requirements for a new declaration and a new consent of assignee.

Each of these requirements is respectfully traversed.

Declaration

The Examiner is requiring a new Declaration because an amendment was filed in this reissue continuation application since the original declaration was executed.

Only two changes were made in the Amendment filed on December 10, 2002 (the only amendment filed in this case). First, in response to the Examiner's request, a new page 14 was added which contained an exact textual copy of the Abstract as it appeared on the front page of the application. See paragraph 4, page 3 of the December 10, 2002 Amendment.

Second, Claim 25 as filed depended from a canceled claim (Claim 7), and was amended in the December 10, 2002 Amendment to correctly depend from Claim 24. See paragraph 5, page 3 of the December 10, 2002 Amendment.

The MPEP states that "a supplemental reissue oath/declaration must be filed, *unless all additional errors corrected are ... typographical, editorial or clerical errors, which are not errors under 35 U.S.C. 251.*" (emphasis added) MPEP, §1414.01, page 1400-29 (August 2001 edition).

Clearly, the two amendments made in the December 10, 2002 Amendment and described above are of a typographical, editorial or clerical nature and are not errors under 35 U.S.C. §251. Accordingly, a new declaration should not be required. Reconsideration and withdrawal of this requirement is respectfully requested.

Consent of Assignee

The Examiner asserts that the Written Consent of Assignee In Continuation of Reissue Application, filed on May 20, 2002, is defective because the signer, Peter Gillingham is not self-evidently empowered to sign on behalf of the assignee.

The MPEP states that “The consent of assignee must be signed by a party authorized to act on behalf of the assignee.” MPEP §1401.01, page 1400-8 (August 2001 edition). §1401.01 refers to the MPEP §324 for a discussion of parties authorized to act on behalf of the assignee. §324 states that “An officer (..., vice-president, ...) is presumed to have authority to sign on behalf of the organization. ... Modifications of these basic titles are acceptable, such as vice-president for sales” MPEP, §324, page 300-19, under the heading “PARTY WHO MUST SIGN,” part (A).

§1401.01 of the MPEP further provides the following exemplary language:

The XYZ Corporation, assignee of U.S. Patent No. 9,999,999, consents of the filing of reissue application No. 09/999,999 ... for the reissue of U.S. Patent No. 9,999,999.

Lilly M. Schor
Vice President,
XYZ Corporation

No statement specifically providing that Lilly M. Schor is “empowered” to sign on behalf of XYZ Corporations is suggested.

Language similar to the above example has been used in the Consent of Assignee signed by Mr. Gillingham, who is clearly designated as “Vice President Business Development.” Accordingly, the Consent of Assignee filed on May 20, 2002 meets the requirements stated in the MPEP. Reconsideration and withdrawal of the rejection of the Consent of Assignee filed on May 20, 2002 is respectfully requested.

Certificate of Correction for Parent Reissue

A Certificate of Correction has previously been filed in the parent reissue (U.S. Patent No. RE 37641) to contain a cross-reference to the current reissue. This Certificate of Correction with the proper cross-reference can be viewed on the USPTO’s web site.

Therefore, the Examiner's requirement that such a Certificate of Correction be filed has already been satisfied.

CONCLUSION

In view of the above remarks, it is believed that all of the Examiner's concerns have been addressed, and it is respectfully requested that the application be passed to issue. If the Examiner feels that a telephone conference would expedite allowance, the Examiner is invited to call the undersigned at (978) 341-0036.

Respectfully submitted,

HAMILTON, BROOK, SMITH & REYNOLDS, P.C.

By 

James M. Smith

Registration No. 28,043

Telephone: (978) 341-0036

Facsimile: (978) 341-0136

Concord, MA 01742-9133

Dated: 